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## BEFORE THE DEPARTMENT OF TRANSPORTATION WASHINGTON, D.C.

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In the Matter of:	)	
FORM 41 AIRFRAME AND	) Docket OST-9	6-1640
AIRCRAFT ENGINE FINANCIAL DATA REPORTING	)	
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## MOTION OF SOUTHWEST AIRLINES CO. TO WITHHOLD FROM PUBLIC DISCLOSURE

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## BEFORE THE DEPARTMENT OF TRANSPORTATION WASHINGTON, D.C.

In the Matter of:	_ ) )	
FORM 41 AIRFRAME AND AIRCRAFT ENGINE FINANCIAL DATA REPORTING	) ) )	Docket OST-96-1640

## MOTION OF SOUTHWEST AIRLINES CO. TO WITHHOLD FROM PUBLIC DISCLOSURE

Pursuant to Rule 12 of the Department's Rules of Practice (14 C.F.R. § 302.12), Southwest Airlines Co. ("Southwest") hereby files this Motion to Withhold from Public Disclosure the information and data incorporated within the accompanying sealed envelope captioned Form 41, Schedule B-7 Airframe and Aircraft Engine Acquisitions and Retirements. This information and data are being reported to the Department in accordance with the requirements of 14 C.F.R. Part 241 with respect to the first quarter of 2009.

The material for which confidentiality is sought includes Southwest's acquisition costs and related financial information with respect to airframes, aircraft, and aircraft engines. This information may properly be withheld from public disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), which permits protection from disclosure for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527 (D.C. Cir. 1979); Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992).

Three elements must be satisfied in order to protect information from public disclosure under 5 U.S.C. § 552(b)(4). The information must be: (1) financial or commercial in nature, (2) obtained from a person outside the government, and (3) confidential or privileged. Gulf and Western Industries, supra, 615 F.2d at 529. Information will be deemed "confidential" if, inter alia, public disclosure is likely to cause substantial harm to the competitive position of the submitting party. See National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974); Critical Mass, supra, 975 F.2d at 879.

The information which Southwest seeks to protect from public disclosure satisfies these three elements. The acquisition cost and financial data that Southwest is reporting to DOT results from negotiations between Southwest and commercial vendors of aircraft, aircraft engines and related components. These prices and terms are clearly "financial or commercial in nature." Further, because these prices and terms are established entirely through negotiations between Southwest and its commercial suppliers, the information is obtained "from a person outside the government." None of this information is provided by any governmental agency or official. Finally, this financial information would not normally be made public by Southwest or its negotiating partners since public disclosure would cause substantial competitive harm to Southwest. Confidential treatment of this commercially sensitive information is particularly appropriate in light of Southwest's purchase agreements with its vendors. Such agreements customarily contain language requiring that Southwest maintain the confidentiality of certain material terms, including acquisition costs. Therefore, the release of such information would significantly hinder Southwest's ability to negotiate favorable costs and terms from commercial vendors of airframes, aircraft and aircraft engines.

WHEREFORE, Southwest hereby requests that confidential treatment be given to all information it files with the Department under Form 41, Schedule B-7, including this Schedule B-7 filing pertaining to the first quarter of 2009.

Respectfully submitted,

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